

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF NEW YORK

MARLO ROSE & NAIRETH OLMOS,

Plaintiffs,

-against-

THE CITY OF NEW YORK, SERGEANT JOSE  
RODRIGUEZ, Tax #931073, OFFICER PEDRO BOBE,  
Shield #23291, OFFICER EMILIO APONTE, Shield #  
24810,

Defendants.

**STIPULATION OF  
SETTLEMENT AND ORDER  
OF DISMISSAL**

11 Civ. 2310

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**WHEREAS**, plaintiffs commenced this action by filing a complaint on or about May 12, 2011, alleging that the defendants violated plaintiffs' federal civil and state common law rights; and

**WHEREAS**, defendants have denied any and all liability arising out of plaintiffs' allegations; and

**WHEREAS**, the parties now desire to resolve the issues raised in this litigation, without further proceedings and without admitting any fault or liability;

**NOW, THEREFORE, IT IS HEREBY STIPULATED AND AGREED**, by and between the undersigned, as follows:

1. The above-referenced action is hereby dismissed against defendants, with prejudice, and without costs, expenses, or attorneys' fees in excess of the amount specified in paragraph "2" below.

2. The City of New York hereby agrees to pay plaintiff MARLO ROSE the sum of TWENTY FIVE THOUSAND (\$25,000.00) Dollars and plaintiff NAIRETH OLMOS

the sum of TWENTY FIVE THOUSAND (\$25,000.00) Dollars, in full satisfaction of all claims, including claims for costs, expenses and attorneys' fees. In consideration for the payment of this sum, plaintiffs agree to dismissal of all the claims against the defendants and to release the defendants and any present or former employees and agents of the City of New York or any entity represented by the Office of the Corporation Counsel, from any and all liability, claims, or rights of action alleging a violation of plaintiffs' civil rights, from the beginning of the world to the date of the General Release, including claims for costs, expenses, and attorneys' fees.

3. Plaintiffs shall each execute and deliver to defendants' attorney all documents necessary to effect this settlement, including, without limitation, a General Release based on the terms of paragraph 2 above and an Affidavit of Status of Liens. If Medicare has provided payment and/or benefits for any injury or condition that is the subject of this lawsuit, prior to tendering the requisite documents to effect this settlement, plaintiffs shall have notified Medicare and shall submit with the settlement documents a Medicare final demand letter for conditional payments. A Medicare Set-Aside Trust may also be required if future anticipated medical costs are found to be necessary pursuant to 42 U.S.C. §1395y(b) and 42 C.F.R. §§411.22 through 411.26.

4. Nothing contained herein shall be deemed to be an admission by the defendants that they have in any manner or way violated plaintiffs' rights, or the rights of any other person or entity, as defined in the constitutions, statutes, ordinances, rules or regulations of the United States, the State of New York, or the City of New York or any other rules, regulations or bylaws of any department or subdivision of the City of New York. Neither the filing of the complaint in this action, the allegations in the complaint, nor the settlement of this action shall be asserted by plaintiffs or their counsel in any other litigation or proceeding as evidence of

wrongful conduct on the part of the City of New York or any present or former employees or agents of the City of New York. This stipulation shall not be admissible in, nor is it related to, any other litigation or settlement negotiations.

5. Nothing contained herein shall be deemed to constitute a policy or practice of the City of New York or any agency thereof.

6. Plaintiffs agree to hold harmless the City of New York regarding any liens or past and/or future Medicare payments, presently known or unknown in connection with this matter. If conditional and/or future anticipated Medicare payments have not been satisfied, defendant the City of New York reserves the right to issue a multiparty settlement check, naming Medicare as a payee or to issue a check to Medicare directly based upon Medicare's final demand letter.

7. This Stipulation and Order contains all the terms and conditions agreed upon by the parties hereto, and no oral agreement entered into at any time nor any written agreement entered into prior to the execution of this Stipulation and Order regarding the subject matter of the instant proceeding shall be deemed to exist, or to bind the parties hereto, or to vary the terms and conditions contained herein.

Dated: New York, New York  
November 16, 2011

Richard J. Cardinale  
The Law Firm of Richard J. Cardinale  
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Suite 1815  
Brooklyn, NY 11242

By: 

Richard J. Cardinale  
*Attorney for Plaintiffs*

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City of New York  
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Police Officer Emilio Aponte  
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(212) 788-1177

By: 

Linda Mindrutiu  
Assistant Corporation Counsel

SO ORDERED: 12/1/11

s/ BMC

Dated: New York, New York  
      , 2011

  
HON. BRIAN M. COGAN  
UNITED STATES DISTRICT JUDGE